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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/267,350 03/15/99 POGREBINSKY

V P-2279-US

WM01/1023

EXAMINER

NGUYEN, P

ART UNIT

PAPER NUMBER

2663

DATE MAILED:

10/23/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/267,350

Applicant(s)

POGREBINSKY ET AL.

Examiner

Phuongchau Ba Nguyen

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8-15-2001 cpa.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

Response to Arguments

1. Applicant's arguments in the interview on October 10, 2001 with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Applicant fails to submit an official amendment as promised in the interview. However, in light of the interview on October 10, 2001, the second paragraph of 35 U.S.C. 112 rejection to claim 1 is now withdrawn.

Claim Rejections - 35 USC 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-4, 6-7, 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 3, it is not clear what meant by "two statistics". Please define. K

Claim 7 also has the same problems.

Claim 4 recites the limitation "said estimate" in line 3. Claim 9 recites the limitation "said network" in line 4. There is insufficient antecedent basis for this limitation in the claim. K

As to claim 6, claim is not clear what meant by "a statistical analysis"(lines 2-3). Please define. K

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1-2, 4-5, 9-11 and 13-14 are rejected under 35 U.S.C. 102(e) as anticipated by Katseff et al (6,301,258).

Katseff discloses a buffer 129 (jitter buffer), a buffer manager 150 (controller) for adjusting the buffer 129 size based on network conditions (i.e., the network relatively stable or jittery)[as claimed likelihood] {col.4, lines 45-61; col.7, line 23 to col.8, line 31; and also see col.8, lines 32-col.9, line 43, figs.5-6}.

Katseff also discloses a decompressor 120 (as in claim 11) in column 4, lines 66-67. The storage unit (as in claim 10) reads on the buffer 129. The burst period reads on column 7, lines 31-38.

6. Claim(s) 12 is rejected under 35 U.S.C. 103(a) as being unpatented over Katseff (6,301,258) in view of Shimada (3,914,790)

Katseff does not disclose an amplifier in communication with said decompressor.

Shimada discloses an amplifier 44-47 in communication with a decompressor 43 {see figure 1}.

Therefore, it would have been obvious to a skilled artisan to implement the amplifier as taught by Shimada to the speaker 170 and decompressor 120 as taught by Katseff to drive the speaker. This is a common practice.

Allowable Subject Matter

7. Claims 3, 6-8 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

8. Applicant's arguments filed 12-18-2000 have been fully considered but they are not persuasive.

A/ Applicants argued in page 3 of Remarks that "With respect to claim 3, the "width" is defined; in the specification at page 11, lines 5-7, as a value for a Time To Play (TTP) statistic. An exemplary width of two statistics is detailed with respect to fig. 7 and at page 11, lines 16-22."

In reply, it is not clear what meant by the "two statistics" at line 5 of claim 3? Were the "two statistics"[in line 5 of claim 3] representing for the "time to play statistic"[in line 5 of claim 3] or for the Hystogram #s 12 and 13 as in figure 7 or for the widths and offsets as in figure 7 as argued. It is notice that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

B/. Applicants also argued that 'With respect to claim 4, "estimating said jitter buffer size" results in "an estimate", and thus, this term in this claim has a proper antecedent.'

In reply, since applicant admitted that "estimating said jitter buffer size" results in "an estimate", thus claim is not proper if using "said estimate" [claim 4, line 3]. Therefore, the rejection in previous office action stands.

C/. Applicants also argued that "Claim 6 is a statistical analysis, as detailed in Appendix A and noted in the specification at, for example, page 12, lines 2-3."

In reply, it is not clear what meant by "claim 6 is a statistical analysis". This does not clarify the confusion raised in previous office action [i.e., claim 6 is not clear what meant by "a statistical analysis" in lines 2-3]. Also, it is notice that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchau Ba Nguyen whose telephone number is (703) 305-0093 and available Monday-Friday from 10:00 AM to 3:00 PM.

Art Unit: 2663


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen, can be reached on (703) 308-5340. The fax number for this group is (703) 872-9413.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-4700.



P. NGUYEN

October 15, 2001



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